

MASSACHUSETTS
Public Employee Retirement Administration Commission
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M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Implementation of settlement in EEOC v. Commonwealth of Massachusetts et al.

DATE: September 15, 2000

The Commonwealth has settled a federal lawsuit initiated by the US Equal Employment Opportunity Commission over the accidental disability provisions in G.L. c. 32, § 7(1) which were found to violate federal age discrimination law (both maximum age and “3/2” rule). Those who will be eligible to apply are those who were denied the opportunity to have their applications processed or apply for accidental disability retirement because they were over the maximum age for their group or because of the operation of the “3/2” rule in G.L. c. 32, § 7(1). As part of this settlement, all persons who are potentially eligible for relief must be located and sent a copy of the enclosed letter. Those individuals can then apply for retroactive benefits. A step by step procedure for searching for effected individuals and processing these applications follows.

(1) SEARCHING RECORDS AND LOCATING POTENTIALLY ELIGIBLE INDIVIDUALS

Boards must search their records by means of a manual or computer search to identify all individuals who, on or after October 16, 1992:

- began receiving a superannuation retirement allowance; or
- received a refund of accumulated total deductions under G.L. c. 32, § 10 or § 11; or
- were no longer making contributions to the relevant retirement system but still had funds on deposit with the system.

A list of such “potentially eligible individuals” including the name and last known address of the identified individuals (excluding public safety addresses and other addresses protected from disclosure by G.L. c. 66, §10) must be compiled based on this search. The Commission recommends the list be maintained in a spreadsheet program to allow ease in future reporting to the EEOC as specified below.

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(2) ELIMINATING EXCLUDED INDIVIDUALS

Once boards compile a list of all such “potentially eligible individuals,” boards can but are not required to, eliminate individuals from that list who meet any of the following criterion:

- persons who began receiving a superannuation retirement allowance, or received a refund of their accumulated total deductions, before attaining an age equal to their maximum age minus two years (maximum age for group 1 is 70, group 2 and 4 is 65);
- persons who are receiving accidental disability retirement allowances;
- persons who applied for accidental disability retirement allowances and whose applications were processed and denied on grounds other than the invalidated provisions of G.L. c. 32, § 7(1);
- state judges, elected officials, personal staff of an elected official chosen by that elected official, appointees of elected officials on a policy making level and immediate legal advisors of an elected official.

This list of “potentially eligible individuals” (regardless of whether any individuals have been excluded) must be sent to the Commission for forwarding to the EEOC. This search must be completed and the list(s) submitted by November 4, 2000.

Boards must also compile a list of those individuals who were excluded from the eligible group based on the above third and fourth criterion, if excluding any of the above listed individuals. The EEOC will review the list and determine whether to challenge any exclusions. This “excluded list” must include the excluded individual’s name, last known address, telephone number, name of the retirement system, job title, reason for termination of employment (if known) and any other information on the reasons for their exclusion. For public safety employees and other addresses protected from disclosure by G.L. c. 66, § 10, the board should not include home addresses or telephone numbers. If an individual was previously denied accidental disability retirement for other reasons (third criterion above), include a copy of the board’s final decision on that application. If boards did not exclude any individuals based on the above criterion, no list is necessary. Some boards may find that it is not practical to exclude any individuals at this time. Any individual who is not excluded now can be excluded based on the above listed criterion at the time they apply for benefits. Each board should send this list of excluded individuals, if any, to the Commission at the same time as the list of “potentially eligible individuals” for forwarding to the EEOC.

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(3) CONTACTING MEMBERS

Once a list of “potentially eligible individuals” has been determined, the boards must send to each individual on the list (but not the list of “excluded individuals”), by first class mail, a copy of the letter attached to this memorandum as “A.” Boards must send this letter within sixty days of sending this list to the Commission as described in (2).

(4) APPLYING FOR BENEFITS

Any individual who wishes to apply for retroactive benefits as a result of this settlement should be given an Application for Disability Retirement and the Affidavit (attached as “B”). The Affidavit must be completed, signed and returned with the completed application unless the individual actually applied for an accidental disability retirement and was turned down because of the maximum age or the “3/2” rule at some point after October 16, 1992. The following individuals are not eligible to apply under this settlement: state judges, elected officials, personal staff of an elected official chosen by that elected official, appointees of elected officials on a policy making level and immediate legal advisors of an elected official. Additionally, any uniformed member of a paid fire department, uniformed member of a police department and correction officer is not eligible to apply under this settlement if they were denied the opportunity to apply because they were over the maximum age for their group. Such public safety individuals may apply under this settlement if they were denied the opportunity to apply based on the “3/2” rule.

The board should review the affidavit to assure that an appropriate reason for not applying in the past is supplied. If boards need assistance in making that determination, they may contact the Commission’s Legal Unit.

Once the Affidavit is received, the application should be processed as any application would be processed. Each applicant has the burden of proving eligibility for benefits. However, no application can be denied or given less favorable consideration if the applicant shows that, because of the passage of time and through no fault of the applicant, information supporting the application has been lost or destroyed. In such circumstances, the retirement board and/or the Commission will consider alternate methods of proof supplied by the applicant. Each applicant must apply for benefits within 180 days of receiving the letter described in (3). Failure to apply in that period will prevent the individual from receiving the benefits of this settlement. Boards should retain any letters returned by the post office.

If the individual’s application is approved by the board through the normal procedures, it must be sent to the Commission for normal approval or remand. If an application is denied, a copy of the standard denial letter must be sent to the EEOC within thirty days at:

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Markus Penzel, Esq.
EEOC
JFK Federal Building, Room 475
Government Center
Boston, MA 02203

(5) BENEFITS FOR SUCCESSFUL APPLICANTS

For each successful applicant, the retirement system will pay a continuing accidental disability retirement allowance for as long as the individual is otherwise eligible. The retirement system will also pay the successful applicant a lump sum equal to the benefits they would have received had they been able to apply (but not for any period before October 16, 1992). Importantly, before any payment is made: the lump sum amount due will be offset by any amount of superannuation retirement benefits the applicant has received since the applicable date, by any amount of excess earnings under G.L. c. 32, § 91A, by any amount of worker's compensation benefits subject to offset pursuant to G.L. c. 32, § 14, and by any third-party recovery subject to offset under G.L. c. 32, § 14A. If the amount which must be offset is larger than the lump sum, the individual must not be paid any retirement allowance until the remaining amount to be offset has been repaid. A calculation of the benefit must be sent the Commission for approval if your board is normally required to do so. Please note on the calculation that this is being submitted pursuant to the EEOC settlement.

Additionally, any applicant who had previously received a refund of his/her accumulated total deductions must repay to the applicable retirement system the amount refunded, plus regular interest (as any buyback would be processed) before the individual receives any benefits. The individual, however, may apply under this settlement without making the refund and any past due or future benefits can be used to offset the repayment obligation.

For each successful applicant, the retirement board will send to the Commission a breakdown of all back lump sum amounts paid to the applicant broken down by amount and any offsets. The Commonwealth will pay an equal amount as liquidated damages directly to the member. Further details on the method of reporting such amounts will be forthcoming.

(6) REPORTING TO THE EEOC

Within six months of the mailing described in (3), boards must update the list of "potentially eligible individuals" to include all those on the list who applied for benefits, those who were approved (the date of approval, the amounts paid broken down by past due amounts, set-offs, the amount sent to the Commonwealth under (5) and future annual payments) and the number of pending applications. This updated list must be sent to the EEOC at:

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EEOC
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This list must be updated every three months until all applicants have been fully processed. The Commission will advise boards when such reports are due.

(7) HEALTH INSURANCE

Each successful applicant for accidental disability retirement will be eligible for health insurance on a prospective basis on the same terms as all other accidental disability retirees in the state, town, city, district or authority. A notice of eligibility for health insurance is included on the back of the attached affidavit ("B").

(8) ENFORCEMENT PROVISIONS

A provision of the settlement allows the EEOC to seek to join as a defendant any retirement board which fails to abide by the terms of the settlement agreement.

The Commission will be scheduling workshops to assist boards with the implementation of this matter shortly.

A copy of the settlement agreement is enclosed ("C"). Any person who has questions or believes that they are otherwise being discriminated against can be referred to Markus Penzel at the EEOC (617-565-3193). Boards with questions can contact the Commission's Legal Unit.